

# EXTENSIONS OF REMARKS

## CLINTON ADMINISTRATION CLOSES COURTHOUSE DOOR

HON. DON YOUNG

OF ALASKA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 24, 1996

Mr. YOUNG of Alaska. Mr. Speaker, I rise to bring to your attention a terrible injustice. The victims of this injustice are hardworking, taxpaying American citizens who are being deprived of basic rights guaranteed to each citizen under the Constitution. Those rights are the right to due process of law and the right to equal protection of the law. Due process guarantees that when the Government might cause us harm, we should have a right to be heard. Equal protection requires equal treatment before the law.

If the Clinton administration has its ways, our citizens will be gagged and denied the right to be heard when they want to complain about what their Government is doing to them under the guise of protecting endangered or threatened species.

The Supreme Court has agreed to hear a case filed by two ranchers in Oregon asserting that Secretary Babbitt violated the Endangered Species Act [ESA] when he tried to reduce the amount of water available to those ranchers for their cattle and crops. They alleged that he disobeyed several requirements of the ESA that would have protected their economic interests. However, they never got their day in court. Mr. Babbitt's lawyers asked the judge to throw out their claim without a hearing. His lawyers claim that people are not protected by the Endangered Species Act so they have no right to complain when the Secretary violates the act and therefore, takes away their ability to support themselves.

The lawyers argued that people's economic, social or recreational concerns are not within the "zone of interest" of the ESA and therefore, they cannot sue to have the Court decide if the Secretary had violated the law.

The judge threw the ranchers out of court, but they appealed to the Ninth Circuit Court of Appeal. Once again, Secretary Babbitt's attorneys argued that the ranchers could not sue to have the Secretary's actions reviewed by the court, because they have no protections under the ESA. This is called the zone of interest test. The ninth circuit in *Bennett v. Plent*, 63 F. 3d 915 (1995) agreed with Secretary Babbitt's lawyers and once again threw these ranchers out of court ruling that they

were not within ESA's zone of interest. The ranchers have now appealed to the Supreme Court. However, Secretary Babbitt's attorneys are now worried about the political consequences of having everyday people denied access to judicial review of Secretary Babbitt's decisions, so they have quit arguing that these ranchers are not protected by the ESA. Instead, they are still arguing that these ranchers should not be allowed to sue but are basing their arguments on other legal technicalities, such as claiming that the ranchers sued the wrong Government agency within Secretary Babbitt's vast Department. At the Supreme Court level the case is known as *Bennett versus Spear*.

If the Supreme Court decides the case the way the lawyers have asked them to, it will leave the zone of interest test in place in all courts within the ninth circuit's jurisdiction. This means that people living in California, Oregon, Washington, Idaho, Alaska, Hawaii, Guam, Nevada, Arizona, and Montana will not be able to sue under the ESA to have a court review illegal actions by Secretary Babbitt. Since the courts in other areas of the country are not bound by the Ninth Circuit Court's decision, citizens in those areas will not have to pass the zone of interest test to have access to the courts. However, if the Supreme Court agrees with the ninth circuits decision, this zone of interest test will become the law of the land and will have broad legal implications, not just for the interpretation of the Endangered Species Act, but for a variety of other environmental statutes as well.

Putting it in layman's language—Secretary Babbitt's lawyers have opened the door of the courthouse to the environmental lawyers, given them millions of dollars of taxpayers money to pay for their lawsuits, and invited them to keep coming back. This has spawned a cottage industry for so-called environmentalists. Although the Federal Government subsidizes hundreds of environmentalists' lawsuits, they have slammed the door of the courthouse to average citizens just trying to protect themselves from abuses by Secretary Babbitt's Department. I have attached a list of cases filed under the ESA and the attorney's fees received by the lawyers in each of these cases. This list was supplied to the Committee on Resources by the Department of Justice.

To say this is unfair is a gross understatement. It is unfair in the extreme and in addition, it is resulting in unreasonable and unbalanced public policy. It is no secret that Federal judges are playing a key role in implementing the Endangered Species Act. When Secretary

Babbitt adopts new rules, he is required by law to receive public comment from any member of the public. When Federal judges interpret the law, they can exclude the general public and allow only a limited viewpoint to be heard. It is no wonder that we end up with judge-made law that is so unbalanced and unreasonable in so many cases.

Not all judges would turn away those citizens who wish to sue to protect their economic, social, or recreational interest. Judge Rosenbaum of the U.S. District Court in Minnesota had this to say when the lawyers representing the Clinton administration asked him to dismiss a suit filed by a group of snowmobilers. He scolded the Government because they could not identify a single person who would have been qualified to complain about the Government's overprotection of endangered species.

Judge Rosenbaum said "the Court is unwilling to adopt the view that the Fish and Wildlife Service is unrestrained if it cloaks any of its acts in the laudable robe of endangered and threatened species protection. This is a form of totalitarian virtue—a concept for which no precedent has been advanced and which is foreign to the rule of law."

He apparently does not agree with the Secretary Babbitt's view that under the law the Federal Government can never go too far in protecting endangered species. In briefs to the Supreme Court the Government says that no one can sue them if they go too far under the ESA.

According to the Secretary Babbitt's lawyers, if the Government violates the constitutional and legal rights of citizens, if it fails to follow the requirements in the Endangered Species Act designed to protect citizens' rights, there is no citizen who can sue to stop such Government overreaching.

That is an incredible statement by our Justice Department lawyers sworn to uphold our Constitution and our Bill of Rights.

I agree with Judge Rosenbaum that allowing only professional environmentalists to use the ESA to further their agenda, whatever that agenda may be, is foreign to the principles of fairness and due process that we hold so dear.

We need to let citizens who are directly impacted by the ESA into the courthouse so that the courts can hear all the facts, all the evidence, and let the truth guide their decisions. When only one side is allowed to present the facts, the truth becomes the victim of injustice.

Case name	Suit number	District	Attorney fees paid
1. Biodiversity Legal Foundation v. Babbitt	95-601	Colorado	\$1,000.00
2. Biodiversity Legal Foundation v. Babbitt	95-382	Colorado	8,000.00
3. Restore: The North Woods v. Babbitt	95-37	New Hampshire	5,400.00
4. Biodiversity Legal Foundation v. Babbitt	95-1815	Colorado	3,500.00
5. Biodiversity Legal Foundation v. Babbitt	95-816	Colorado	500.00
6. The Bay Institute of San Francisco, et al. v. Babbitt	94-0265	California, East	5,000.00
7. National Audubon Society v. Babbitt, et al.	94-0105	California, South	7,540.61
8. Friends of the Wild Swan, Inc., Alliance for the Wild Rockies, Inc., et al. v. Babbitt	94-0246	District of Columbia	4,500.00
9. Southern Utah Wilderness Alliance v. Morgenweck	94-717	Colorado	4,200.00
10. Environmental Defense Center v. Babbitt	94-0743	California, Central	4,074.75
11. Biodiversity Legal Foundation, et al. v. Babbitt	94-1086	Colorado	1,408.19
12. Biodiversity Legal Foundation v. Babbitt	94-0920	District of Columbia	5,000.00
13. Biodiversity Legal Foundation v. Babbitt	94-0920	District of Columbia	3,815.00

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

Case name	Suit number	District	Attorney fees paid
14. Greater Gila Biodiversity Project v. USFWS .....	94-0288	Arizona .....	2,048.91
15. Southwest Center for Biological Diversity, et al. v. USFWS .....	94-0696	Arizona .....	1,665.00
16. Southwest Center for Biological Diversity, et al. v. USFWS .....	94-0739	Arizona .....	1,000.00
17. Environmental Defense Center v. Babbitt .....	94-0788	California, Central .....	3,815.00
18. Oregon Natural Resources Council v. Babbitt .....	94-666	Oregon .....	4,000.00
19. Mountain Lion Fountain v. Babbitt .....	94-1165	California, East .....	6,500.00
20. Dr. Robin Silver, et al. v. Babbitt .....	94-0337	Arizona .....	4,000.00
21. Dr. Robin Silver, et al. v. Babbitt .....	94-0337	Arizona .....	102,418.86
22. Southwest Center for Biological Diversity v. Babbitt .....	94-1034	Arizona .....	5,145.00
23. The Biodiversity Legal Foundation v. Babbitt .....	94-02441	District of Columbia .....	4,000.00
24. Idaho Conservation League v. Babbitt .....	94-0351	Idaho .....	5,000.00
25. Northwest Coalition for Alternatives to Pesticides v. Babbitt .....	94-6339	Oregon .....	10,500.00
26. Southwest Center for Biological Diversity v. Babbitt .....	94-1946	Arizona .....	1,971.01
27. Southwest Center for Biological Diversity v. Babbitt .....	94-2036	Arizona .....	40,000.00
28. Native Plant Society of Oregon v. U.S. DOI .....	93-180	Oregon .....	13,046.19
29. National Audubon Society et al. v. Babbitt et al. ....	93-1152	District of Columbia .....	22,500.00
30. Idaho Dept. of Fish and Game v. National Marine Fisheries Service .....	93-1603	Oregon .....	8,405.06
31. Oregon Natural Resources Council v. Dept. of Commerce .....	93-293	Oregon .....	16,200.00
32. Clemmys Karmorata v. USFWS .....	93-6135	Oregon .....	2,522.30
33. Environmental Defense Center v. Bruce Babbitt .....	93-1847	California, Central .....	4,700.00
34. Environmental Defense Center v. Bruce Babbitt .....	93-1848	California, Central .....	4,700.00
35. Environmental Defense Center v. Babbitt .....	93-3379	California, Central .....	4,300.00
36. Desert Tortoise, et al. v. Lujan .....	93-0114	California, North .....	69,000.00
37. Southern Utah Wilderness Alliance v. Bruce Babbitt .....	93-2376	Colorado .....	8,500.00
38. Greater Yellowstone Coalition, et al. v. F. Dale Robertson (Chief, USFWS) .....	93-1495	District of Columbia .....	32,750.00
39. Natural Resources Defense Council, et al. v. Bruce Babbitt, Sec. DOI .....	93-0301	California, North .....	262,096.76
40. Sierra Club, et al. v. Bruce Babbitt, et al. ....	93-1717	California, South .....	11,368.76
41. Greater Gila Biodiversity Project v. USFWS .....	93-1913	Arizona .....	11,000.00
42. Sierra Club, et al. v. David Garber, et al. ....	93-069	Montana .....	55,000.00
43. Bay Institute of San Francisco v. Lujan .....	92-2132	California, East .....	60,000.00
44. Pacific Rivers Council v. Thomas .....	92-1322	Oregon .....	165,000.00
45. Colorado Wildlife Federation v. Turner .....	92-884	Colorado .....	31,351.90
46. Colorado Wildlife Federation v. Turner .....	92-884	Colorado .....	5,000.00
47. Environmental Defense Center v. Lujan .....	92-6082	California, Central .....	7,500.00
48. Idaho Conservation League v. Manuel Lujan, et al. ....	92-0260	Idaho .....	21,166.00
49. Canadian Lynx, Greater Ecosystem Alliance v. Lujan .....	21-1269	Washington, West .....	2,000.00
50. Canadian Lynx, Greater Ecosystem Alliance v. Lujan .....	92-1269	Washington, West .....	9,500.00
51. Friends of Walker Creek Wetlands v. Dept. of the Interior .....	92-1626	Oregon .....	12,000.00
52. Idaho Conservation League, et al. v. Lujan .....	92-0406	Idaho .....	8,000.00
53. Fund for Animals v. Manuel Lujan, et al. ....	92-800	District of Columbia .....	67,500.00
54. National Audubon Society v. Lujan .....	92-209	California, South .....	7,348.75
55. Wendell Wood, et al. v. Manuel Lujan, et al. ....	91-6496	Oregon .....	14,547.05
56. Wendell Wood, et al. v. Manuel Lujan, et al. ....	91-6496	Oregon .....	550.00
57. California Native Plant Society v. Manuel Lujan, Jr. ....	91-0038	California, East .....	16,678.25
58. Earth Island Institute, et al. v. Manuel Lujan, Jr. ....	91-6015	Oregon .....	32,338.70
59. The Fund for Animals ein., et al. v. Turner .....	91-2201	District of Columbia .....	36,000.00
60. West Snowy Plover v. Lujan .....	91-1421	Washington, West .....	7,719.92
61. Edward Wilkinson Mudd Jr. v. William Reilly, Admin., EPA .....	91-1392	Alabama, North .....	39,000.00
62. Hawaiian Crow v. Manuel Lujan .....	91-00191	Hawaii .....	195,000.00
63. Sierra Club v. Lujan .....	91-069	Texas, West .....	666,666.67
64. Sierra Club v. Lujan .....	91-069	Texas, West .....	666,666.67
65. Sierra Club v. Lujan .....	91-069	Texas, West .....	666,666.66
66. Sierra Club v. Lujan .....	91-069	Texas, West .....	1,550,000.00
67. Marbled Murrelet, et al. v. Manuel Lujan .....	91-522	Washington, West .....	43,519.49
68. Marbled Murrelet, et al. v. Manuel Lujan .....	91-522	Washington, West .....	17,589.98
69. Dioxin/Organochlorine Center and Columbia River United v. Dana Rasmussen .....	91-1442	Washington, West .....	61,500.00
70. Colorado Envtl. Coalition v. J. Turner .....	91-1765	Colorado .....	5,168.40
71. Florida Key Deer, et al. v. Robert H. Morris .....	90-10037	Florida, South .....	130,000.00
72. Conservation Council for Hawaii, et al. v. Manuel Lujan and John F. Turner .....	89-00953	Hawaii .....	64,635.25
73. National Wildlife Federation, et al. v. Robert Mosbacher, Sec. of Commerce .....	89-2089	District of Columbia .....	42,500.00
74. Sierra Club Legal Defense Fund v. Manuel Lujan, Jr., Sec. of Interior, et al. ....	89-1140	District of Columbia .....	9,000.00
75. Sierra Club, et al. v. James A. Baker, et al. ....	89-3005	District of Columbia .....	18,583.72
76. Resources Limited Inc., et al. v. F. Dale Robertson, et al. ....	89-41	Montana .....	90,000.00
77. Environmental Defense Fund v. Lujan .....	89-2034	District of Columbia .....	47,000.00
78. Silver Rice Rat, et al. v. Manuel Lujan .....	89-3409	District of Columbia .....	2,237.50
79. Northern Spotted Owl, et al. v. Donald Hodel, et al. ....	88-573	Washington, West .....	19,500.00
80. World Wildlife Fund v. Donald P. Hodel, et al. ....	88-573	Washington, West .....	56,718.00
81. Sierra Club and League for Coastal Protection v. John Marsh, et al. ....	86-1942	California, South .....	56,000.00
82. Greenpeace v. Baldrige .....	86-0129	Hawaii .....	44,774.16
83. Sierra Club, et al. v. Richard Lyng .....	85-69	Texas, East .....	88,794.01
84. Natural Resources Defense Council v. Donald Hodel (Kesterson) .....	85-1214	California, East .....	149,647.50
85. Natural Resources Defense Council v. Donald Hodel (Kesterson) .....	85-1214	California, East .....	518,000.00
86. Natl. Wildlife Foundation, et al. v. Endangered Species Committee, et al. ....	79-1851	District of Columbia .....	57,000.00
87. Defenders of Wildlife v. Thomas .....	Strychnine	Minnesota .....	20,000.00
			122,500.00

## H.R. 4138, THE HYDROGEN FUTURE ACT OF 1996

HON. ROBERT S. WALKER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 24, 1996*

Mr. WALKER. Mr. Speaker, I ask unanimous consent to bring before the House H.R. 4138, the Hydrogen Future Act of 1996, for its immediate consideration.

Mr. BROWN and I are introducing H.R. 4138 to focus the U.S. Department of Energy's research and development of hydrogen as a fuel. Last year, with support on both sides of the aisle, a bill similar to this one, H.R. 655, passed the House with an overwhelming majority on May 2, 1995.

H.R. 4138, incorporates some changes made to the earlier bill to accommodate inter-

ests of Members of the Senate. These changes have been approved by the chairman and ranking members of the committees of jurisdiction.

I would like to thank the ranking member of the House Science Committee, Mr. BROWN, for his support in cosponsoring this bill with me. Mr. BROWN has long been a supporter of hydrogen research and development, and I have appreciated his efforts in this area.

I would also like to thank the Committee on Government Reform and Oversight for its co-operation on a provision in this bill over which it has jurisdiction.

Mr. Speaker, H.R. 4138 provides the legislative authority necessary to continue the research and development of hydrogen as fuel into the 21st century.

Hydrogen is essentially a nonpolluting, environmentally friendly, renewable resource that is one of the answers to our future energy needs.

Under H.R. 4138, the U.S. Department of Energy is directed to continue and expand its research and development of hydrogen as a fuel cooperatively with the private sector under a peer reviewed competitive process. H.R. 4138 slowly increases funding for R&D over a period of 5 years to a level recommended by the Department of Energy's hydrogen technical advisory panel. This increase, which will occur at a slower pace than recommended, will help assure the best utilization of the increase while allowing budget priorities to be decided under a balanced plan.

The Hydrogen Future Act, gives the House the opportunity to send to the Senate, and then the President's desk, a bill which is good for the environment, good for the economy, good for our health, and good for our future.

I hope my colleagues will join me in voting for passage of H.R. 4138, the Hydrogen Future Act of 1996.